

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 23 2005

OFFICE OF
MANAGING DIRECTOR

Mr. Mike Benson
KWTY-FM
Post Office Box 91
Olancha, CA 93549

Re: KWTY-FM
Request for Waiver of FYs 1999, 2000,
and 2003 Regulatory Fees
Fee Control No. 00000RROG-05-049

Dear Mr. Benson:

This responds to your April 14, 2005 letter requesting waiver of the regulatory fees for fiscal years (FYs) 1999, 2000, and 2003 for KWTY-FM in Olancha, California. Our records show that the FY 1999 and FY 2003 regulatory fees in the amounts of \$441.00 and \$593.75, respectively, which include late penalties, have not been paid.

In your letter, you state that KWTY-FM previously was denied waivers for FYs 1999 and 2000 for lack of documentation to support your claim of financial hardship. You state that such information is enclosed and renew your request for waiver for these FYs. You also request waiver of the regulatory fees for FY 2003. In support, you state that KWTY-FM is licensed to serve Cartago, California, a community of 50 persons, and that Olancha, California, which has 220 persons, is the only other community in your primary service area. You state that KWTY is located in a remote part of California and provides the only emergency and traveler information from that part of Inyo County. You further state that KWTY-FM is operated primarily by unpaid volunteers, and that revenues have decreased and maintenance expenses have increased. You enclose a profit and loss summary for the period January 1 through December 31, 2002, which shows total income as \$8,114, total expenses as \$9,533, resulting in a net loss of \$1,419.¹

Your request for waiver of the FY 1999 regulatory fees was not filed with the Commission until long after the close of the FY in question and, accordingly, does not provide a basis for relief or otherwise warrant any further consideration. We therefore deny your request for a waiver of the regulatory fee for FY 1999.² Payment of the \$441.00 regulatory fee for FY 1999 for KWTY-FM, which includes a late penalty, is now

¹ We obtain this figure by subtracting \$9,533 from \$8,114, although your summary lists net loss as \$1,492.

² See Letter from Mark A. Reger, Chief Financial Officer, Office of Managing Director, FCC, to C. Michael Curry (dated Aug. 27, 2002) (denying untimely request for regulatory fee relief for FYs 1997, 1998, and 1999, because the request was filed on March 14, 2002, "long after the fiscal years in question").

Mr. Mike Benson

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due.³ The regulatory fee and late charge penalty (i.e., \$441.00) should be filed with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter.

As to your request for waiver of the FY 2000 regulatory fee, our records indicate that we waived this fee by letter dated April 27, 2001. We therefore dismiss this request.

As to your request for waiver of the FY 2003 regulatory fee, in establishing a regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), recon. granted, 10 FCC Rcd 12759 (1995). In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits, and considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public. Thus, even if a station loses money, any funds paid to principals, deductions for depreciation or similar items are considered funds available to pay the fees.

Our review of the financial documentation you submitted indicates that KWTY-FM experienced a financial deficit in 2002 without regard to any deduction for depreciation and that no payments were made to any principal or officer of the station, which was largely staffed by volunteers. Therefore, your request for a waiver of the regulatory fee for FY 2003 is granted. This waiver, however, is limited to the FY 2003 regulatory fee. If KWTY-FM continues to experience financial hardship, you may request waiver of the fees for succeeding years only if supported by appropriate documentation.

If you have any questions concerning this letter, please contact the Revenue and Receivable Operations Group at (202) 418-1995.

Sincerely,



Mark A. Reger
Chief Financial Officer

³ The Communications Act of 1934, as amended, requires the Commission to assess a late charge penalty of 25 percent on any regulatory fee not paid in a timely manner. It is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year.

KWTY-FM
FAC ID: 41590
Box 91,
Olancho, CA
93549

April 14, 2005

Mr. Tom Putnam
Federal Communications Commission
445 12th st, SW, Room 1A820
Washington, D.C. 20554
Fax: 202 418 2076

RE: The following regulatory fees: FY 1999 #200090836 \$441.00
FY 2000 #2009MBC1133 \$386.25
FY 2002 #FY03PM0112 \$468.75
FY 2003 #04RE0022180 \$593.75

A recent check on the fee filer page shows the above referenced outstanding amounts for KWTY. Our records indicate the following: -----

FY 1999 and 2000: Application was made for waivers but was denied because financial documentation was not included. We wish to submit this info at this time for consideration in resolving these fees (pages 2 and 3).

FY 2002: Application for waiver was made and granted per attached letter from Mr. Mark Reger (pages 4 and 5).

FY 2003: We wish to apply for waiver at this time. Financial info is included (page 6).

KWTY is licensed to a community of 50 persons (Cartago) and the only other community in our primary service area (Olancho) has 220 persons. ~~KWTY is located in a remote part of California and provides the only emergency and traveler information from this part of Inyo county.~~

The station is operated primarily thru the volunteer efforts of retired local residents, none of which are paid for their time. Revenues are down this year and maintenance costs were increased.

Thank You for your consideration in this matter. Please reply to the address at the top of the page. Refer any questions to Mark Miller at (530) 893.8737 or mbenson@kwtv.com.


Mike Benson, KWTY